

## **Chapter 104**

### **Storm Water Management**

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## **Chapter 104. Storm Water Management**

### **Section 104-1. Authority and administration.**

1. This chapter is adopted under authority granted by secs. 62.231 and 62.234, Wisconsin State Statutes. This chapter supersedes all conflicting and contradictory storm water management regulations previously adopted by the city under sec. 62.23, Wisconsin State Statutes. Except as specifically provided for in secs. 62.231 or 62.234, sec. 62.23 applies to this chapter and to any amendments to this chapter.
2. The requirements of this chapter do not preempt more stringent storm water management requirements that may be imposed by the Wisconsin Department of Natural Resources (“DNR”).
3. The provisions of this chapter are not intended to limit any other lawful regulatory powers of the city.
4. The city council designates the city engineer to administer and enforce the provisions of this chapter. The city engineer will be responsible for the administration and enforcement of this chapter. The municipal services committee may review the city engineer’s decisions upon written request by an applicant or permit holder to the committee chair.

(Ord. 2005-27, Ord. 2009-05, Ord. 2014-02)

### **Section 104-2. Findings of fact.**

1. The city council finds that uncontrolled, post-construction runoff from land development activity has a significant impact upon water resources and the health, safety, and general welfare of the community, and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can—
  - a. Degrade physical stream habitat by increasing stream bank erosion and stream bed scour, diminishing groundwater recharge and stream base flows and increasing stream temperature;
  - b. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational, and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants;
  - c. Alter wetland communities by changing wetland hydrology and increasing pollutant loads;
  - d. Reduce the quality of groundwater by increasing pollutant loading;

- e. Threaten public health, safety, property, and general welfare by increasing major flood peaks and volumes and overtaxing storm sewers, drainage ways, and other minor drainage facilities;
  - f. Undermine floodplain management efforts by increasing the incidence levels of flooding.
2. The city council finds that properly planned, implemented, and maintained storm water control best management practices (BMPs) can significantly reduce these impacts.

(Ord. 2005-27).

**Section 104-3. Purpose and intent.**

1. The general purpose of this chapter is to promote the health, safety, and general welfare of the people, preserve the natural resources, and protect the quality of the waters of the state in and near the city, to the extent practicable. Specific purposes are to—
  - a. Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; preserve ground cover and scenic beauty; promote sound economic growth; control the exceeding of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
  - b. Foster consistent, statewide application of post-construction performance standards developed by the DNR under sec. 281.16 (2), Wisconsin State Statutes.
  - c. Assist the city in becoming an "Authorized Local Program" as described in NR 216, Subchapter III, Wisconsin Administrative Code.
  - d. Promote cooperation among other governmental units to manage storm water in an effective, cost-efficient, and equitable manner.

The intent of this chapter is to establish long-term, post-construction runoff management requirements that require the use of BMPs to reduce the amount of post-construction storm water and associated pollutants reaching waters of the state or adjacent property. It is intended that permit holders be able to choose the most cost-effective BMPs meeting the performance standards required under this chapter. This chapter is not intended to limit activity or division of land permitted under the applicable zoning and land division ordinances.

The city council recognizes that while this chapter is generally applied on a site-by-site basis, the preferred method of achieving the post-construction storm water runoff performance standards set forth in this chapter is through the preparation and implementation of comprehensive, system-level storm water management plans that cover hydrological units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to

discharge to waters of the state. Where such plans conform with the provisions authorized by sec. 281.16 (2), Wisconsin State Statutes for regional storm water management measures, and have been approved by the city council as an element of the city's comprehensive plan, it is the intent of this chapter that the approved plan be used to establish the post-construction runoff management performance standards required for a permit under this chapter for sites located within the area of the plan.

(Ord. 2005-27, Ord. 2009-05)

#### **Section 104-4. Jurisdiction, Applicability and Waivers.**

1. *Jurisdiction.* The provisions of this chapter shall apply in all lands within the jurisdictional boundaries of the city.
2. *Applicability.*
  - a. This chapter applies to the following land disturbing construction activities unless documentary evidence establishes that the project bids were advertised, contracts signed where no bids were advertised, or substantial, on-site, work on the project had been completed before the effective date of this chapter:
    - i. A construction site that has one or more acres of land disturbing construction activity.
    - ii. Activities under (2) which are less than one acre but are part of a larger construction site that in total disturbs more than one acre are subject to this chapter.
    - iii. Land disturbing construction activities, on a site of any size, that have been observed to cause, or have been determined likely to result in, runoff in excess of the safe capacity of the existing drainage facilities or receiving body of water, undue channel erosion, increased water pollution by scouring or the transportation of particulate matter, or endangerment of property or public safety. The city engineer shall make this determination after review by the Technical Review Committee.
3. *Exemptions.*
  - a. This chapter does not apply to the following:
  - b. Non-point discharges from agricultural facilities and practices;
  - c. Non-point discharges from silviculture (forestry) activities;
  - d. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility;
  - e. Land disturbing construction activities conducted, or contracted by, any state agency, as defined under sec. 227.01 (1), Wisconsin State Statutes, but also including the office of district attorney which are subject to the state storm water management plan promulgated or a memorandum of understanding entered into under sec. 281.33 (2), Wisconsin State Statutes;
  - f. Redevelopment post-construction sites with no increase in exposed parking lots or roads;

- g. Post-construction sites with less than 10 percent connected imperviousness, based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre;
  - h. Underground utility construction such as water, sewer, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction;
  - i. Any land disturbing construction activity that is designed and/or certified by the Rock County Land Conservation Department or the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as part of a soil conservation or water pollution control project shall comply with all of the requirements of this chapter, but shall be exempted from obtaining a permit, providing a financial guarantee, or paying fees under sec. 104-8.
  - j. Any land disturbing construction activity that is conducted by or for the city shall comply with all of the requirements of this chapter, including obtaining a permit and submitting a storm water management plan, but shall be exempted from providing a financial guarantee, or paying fees under sec.104-8. At the discretion of the city engineer, for land disturbing construction activity that is conducted by or for the city, a qualified employee of the city department, or contracted agent, undertaking the construction activity may administer the permit.
  - k. Any land disturbing construction activities conducted on sites which were included as part of a previously completed storm water management plan that was approved under this chapter shall be exempt from obtaining a permit, provided:
    - l. new activities do not render the existing storm water BMPs less effective, or
    - m. new site development exceeds the assumptions made in the calculations used in development of the previous plan.
4. *Waivers.*
- a. The city engineer may waive any or all of the requirements of this chapter if the city engineer determines that:
    - i. A requirement is not necessary for a particular site to ensure compliance with the intent of this chapter; or
    - ii. Storm water runoff from the construction site activities will have no appreciable off-site impact.
  - b. The Technical Review Committee shall be responsible for making recommendations to the city engineer concerning all waiver applications.

(Ord. 2005-27, Ord. 2009-05)

#### **Section 104-5. Technical standards.**

- 1. All BMPs required to comply with this chapter shall meet the design criteria, standards and specifications identified, developed or disseminated by the DNR under subchapter V of Chapter NR 151, Wisconsin Administrative Code.
- 2. Where technical standards have not been identified or developed by the DNR, other technical standards may be used provided that the methods have been approved by the city engineer.

3. The city engineer shall develop a “Design Guidelines and Standards” manual to supplement this chapter. This manual will assist landowners, developers, and consultants to comply with the provisions of this chapter. The manual will include approved best management practices (BMPs), either within the manual or by reference, which may be used to meet the performance standards of this chapter. However, other BMPs that meet the performance standards of this chapter may be approved for use.

(Ord. 2005-27, Ord. 2009-05)

## **Section 104-6. Performance Standards.**

### **1. GENERAL CONSIDERATIONS.**

#### **a. Planning Principles.**

- i. A storm water management plan shall maintain as nearly as possible, the natural drainage patterns of the site. Current topography and land cover features such as drainage swales, depressions, kettles, soil infiltrating capacity, and groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section. The use of native prairie grasses as ground cover is encouraged.
- ii. Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- iii. A storm water management plan shall maintain as nearly as possible, the calculated pre-development peak flows of the site.
- iv. The maximum controlled storm water runoff storage release shall not exceed the safe storm water drainage capacity of the downstream drainage pattern.
- v. Discharges from new construction must have a stable outlet capable of carrying designed flow at a non-erosive velocity. Outlet design must consider flow capacity and flow duration. This applies to both the site outlet and the ultimate outlet to a storm water conveyance or water body.
- vi. Changes to the function of wetlands shall be minimized to the maximum extent practical. Where such changes are proposed, the impact of the proposal on wetland functional values shall be assessed using standard methods appropriate to the affected wetland that are acceptable to the DNR, as defined by NR 103, Wisconsin Administrative Code.

### **2. STORM WATER RUNOFF PEAK DISCHARGE RATE AND VOLUME.** Unless otherwise provided for in this chapter, all land development activities subject to this chapter shall establish onsite management practices to control the peak flow rates of storm water discharged from the site as described in this chapter. Infiltration of storm water runoff from driveways, rooftops, parking lots, and landscaped areas shall be incorporated to the maximum extent practical to provide volume control in addition to control of peak flows.

- a. The proposed land development shall, by design, not increase peak flow rates of storm water runoff from that which would have resulted from the same storm occurring over the site with the land in its pre-developed conditions for the two (2), ten (10), and one-hundred (100) year, twenty-four (24) hour storms.

- b. All runoff and flow calculations required for peak flow design shall use a hydrograph-producing method such as described in the most recent version of TR-55. The city engineer retains approval of the methods used to determine runoff volume. Calculations for determining peak runoffs and volumes must incorporate the following assumptions.
  - i. The design rainfall storm accumulation for different storm intensities in the city shall be based on the following data.
    - 1. Rainfall Accumulation for 24 hour Rainfall:
      - i. 2-Year Storm 2.9 Inches
      - ii. 10-Year Storm 4.1 Inches
      - iii. 100-Year Storm 6.0 Inches
    - 2. The rainfall distribution for the storms shall be based on the NRCS Type II storms with an antecedent moisture condition of two (2), which are described in TR-55. 2. In this chapter the following year and location has been selected as average annual rainfall: Madison, 1981 (Mar. 12 - Dec. 2).
    - 3. The estimated engineering properties of the soils may be obtained from the Soil Survey of Rock County, Wisconsin, dated July 1974. Onsite soil investigation may be required to verify the Soil Survey information.
    - 4. Runoff Curve Numbers for on-site areas shall be based on pre-developed and proposed developed land use conditions. Runoff Curve Number for off-site areas shall be based on the pre-developed or proposed land use, which ever results in the highest peak flows. Runoff Curve numbers are described in TR-55.
  - c. Determination of volume of runoffs shall be determined using standard hydrology methods and procedures described the most recent version of TR-55 that are appropriate to site conditions. These volumes can be determined manually or with computer programs such as the HEC-1 program, NRCS TR-20 program, HEC-HMS program, P8, or HydroCad. The models must incorporate the assumptions listed in this chapter. The city engineer retains approval of the methods used to determine runoff volume.
  - d. All storm water storage facilities, conveyance systems within the proposed development, and receiving surface runoff from the proposed development, shall be designed to completely contain peak storm discharge and volume as described in the following subsections.
    - i. For storage facilities, the design storage for the 100-year, 24-hour storm shall be contained within the top of the storm water embankment.
    - ii. For open channel conveyance systems, such as open channels or grassed drainage swales, the peak flow from the 25-year, 24-hour storm shall be completely contained within the channel bottoms and banks.
    - iii. For culverts under rural town roads the peak flow from the 10-year, 24-hour storm shall be completely contained within the pipe with no surcharging or pressurized flow.

- iv. For storm sewer systems the peak flow from the 2-year, 24-hour storm shall be completely contained within the pipe with no surcharging or pressurized flow.
  - e. The storm water runoff peak discharge rate and volume requirements of this section of this chapter does not apply to any of the following:
    - i. A post-construction site where the change in hydrology due to development does not increase the existing adjacent surface water elevation of rivers streams or lakes by more than 0.01 foot for the 100-year, 24-hour storm.
    - ii. A redevelopment post-construction site.
    - iii. An in-fill development of less than 5 acres.
  - f. A determination as to whether the exceptions listed in e. above apply to a particular post-construction site must be made as part of the waiver process described in sec. 104-7.3 of this chapter.
- 3. **STORM WATER RUNOFF DISCHARGE QUALITY - TOTAL SUSPENDED SOLIDS.** BMPs shall be designed, installed or applied, and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
  - a. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this section.
  - b. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this section.
  - c. For in-fill development under 5 acres that occurs within 10 years after August 18, 2005, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this section.
  - d. For in-fill development that occurs 10 or more years after August 18, 2005, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this section.
  - e. Notwithstanding paragraphs a. through d., if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.
- 4. **INFILTRATION.** BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in paragraphs e. through h.
  - a. For residential developments one of the following shall be met:
    - i. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume,



based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

- ii. Infiltrate 25% of the post-development runoff from the 2-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
- b. For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:
  - i. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
  - ii. Infiltrate 10% of the runoff from the 2-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
- c. Pre-development conditions shall be the same as in paragraph (2).
- d. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with paragraph (H). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
- e. Exclusions. The runoff from the following areas is prohibited from meeting the requirements of this section. A determination as to whether these exclusions apply to a particular post-construction site must be made as part of the waiver process described in sec. 104-7.3 of this chapter.
  - i. Areas associated with tier 1 industrial facilities identified in NR 216.21 (2) (a), Wisconsin Administrative Code, including storage, loading, rooftop and parking.
  - ii. Storage and loading areas of tier 2 industrial facilities identified in NR 216.21 (2) (b), Wisconsin Administrative Code.
  - iii. Fueling and vehicle maintenance areas.
  - iv. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.
  - v. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this paragraph does not prohibit infiltration of roof runoff.

- vi. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
  - vii. Areas within 400 feet of a community water system well as specified in NR 811.16 (4) (d) 3., Wisconsin Administrative Code, or within 100 feet of a private well as specified in NR 812.08 (4), Wisconsin Administrative Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
  - viii. Areas where contaminants of concern, as defined in NR 720.03 (2), Wisconsin Administrative Code are present in the soil through which infiltration will occur.
  - ix. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10 percent fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This paragraph does not prohibit infiltration of roof runoff.
- f. Exemptions. The following are not required to meet the requirements of this section. A determination as to whether these exceptions apply to a particular post-construction site must be made as part of the waiver process described in sec. 104-7.3 of this chapter.
- i. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
  - ii. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.
  - iii. Redevelopment post-construction sites.
  - iv. In-fill development areas less than 5 acres.
  - v. Infiltration areas during periods when the soil on the site is frozen.
  - vi. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
- g. Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph.
- h. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with NR 140, Wisconsin Administrative Code. However, if site-specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
- i. Notwithstanding paragraph (h), the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

## 5. PROTECTIVE AREAS.

- a. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.
  - i. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in NR 103.04, 75 feet.
  - ii. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
  - iii. For lakes, 50 feet.
  - iv. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.
  - v. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.
  - vi. In paragraphs i., iv., and v., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in NR 103.03. 7. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
- b. This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to paragraph (D).
- c. The following requirements shall be met:
  - i. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction. No waivers may be granted by the city engineer for this requirement.
  - ii. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod

or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur, subject to any required approval by the DNR.

- iii. Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

d. This paragraph does not apply to:

- a. Redevelopment post-construction sites.
- b. In-fill development areas less than 5 acres.
- c. Structures that cross or access surface waters such as boat landings, bridges and culverts.
- d. Structures constructed in accordance with 59.692 (1v), Wisconsin State Statutes.
- e. Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

- 5. **FUELING AND VEHICLE MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

6. **SWALE TREATMENT FOR TRANSPORTATION FACILITIES.**

- a. **Applicability.** Except as provided in paragraph (B), transportation facilities that use swales for runoff conveyance and pollutant removal shall meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:
  - i. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
  - ii. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.
- b. **Exemptions.** The city engineer may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 and where the initial surface water of the state that the runoff directly enters is any of the following:
  - i. An outstanding resource water.
  - ii. An exceptional resource water.

- iii. Waters listed in sec. 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
- iv. Waters where targeted performance standards are developed under NR 151.004, Wisconsin Administrative Code, to meet water quality standards.

## 7. LOCATION AND REGIONAL TREATMENT OPTION.

- a. No storm water facility shall be located closer to an existing or planned well than the distances prescribed in NR 811 and NR 812 as minimum separation distances between wells from storm water facilities listed as possible sources of contamination.
- b. The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.
- c. Post-construction runoff within non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this chapter. Post-construction BMPs may be located in non-navigable surface waters.
- d. Except as allowed under paragraph (E), post-construction runoff from new development shall meet the post-construction performance standards prior to entering navigable surface water.
- e. Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this chapter if:
  - i. The BMP was constructed prior August 18, 2005 and the BMP either received a permit issued under Chapter 30, Wisconsin State Statutes, or the BMP did not require a Chapter 30, Wisconsin State Statutes, permit; and
  - ii. The BMP is designed to provide runoff treatment from future upland development.
- f. Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
  - i. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
  - ii. Post-construction BMPs for such runoff may be located in navigable surface water if allowable under all other applicable federal, state and local regulations such as Chapter NR 103, Wisconsin Administrative Code and Chapter 30, Wisconsin State Statutes.
- g. The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.
- h. The city engineer may approve off-site management measures provided that all of the following conditions are met:
  - i. The city engineer determines that the post-construction runoff is covered by a storm water management system plan that is approved by the municipal services committee and that contains management requirements consistent with the purpose and intent of this chapter.
  - ii. The off-site facility meets all of the following conditions:

1. The facility is in place.
  2. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that would be afforded by on-site practices meeting the performance standards of this chapter.
  3. The development includes means to convey storm water to the offsite storage facility.
  4. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
  - i. Where a regional treatment option exists such that the city engineer exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the city engineer. In determining the fee for post-construction runoff, the city engineer shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
8. **ALTERNATE REQUIREMENTS.**
- a. The city engineer may establish storm water management requirements more stringent than those set forth in this section if the city engineer determines that an added level of protection is needed to protect sensitive resources.
  - b. The Technical Review Committee shall make recommendations to the city engineer concerning any storm water requirements more stringent than those set forth in this section.

(Ord. 2005-27, Ord. 2009-05, Ord. 2014-02)

## **Section 104-7. Permits and Waivers.**

1. **PERMIT OR WAIVER REQUIRED.** No responsible party may undertake a land disturbing construction activity subject to this chapter without receiving a permit from the city engineer, or a waiver as provided in sec.104-4.4, prior to beginning the proposed activity.
2. **PRELIMINARY REVIEW LETTER.**
  - a. A preliminary review letter provides a potential permit applicant with a simple initial evaluation of whether storm water management performance standards can be met for a proposed site, lot layout, or construction design. With the exception of the conditions under sec. 104-7.2.b.this review is voluntary and intended to assist applicants to obtain a permit. A preliminary review letter does not guarantee that a plan will be approved, or that a permit will be issued. Permit applications and plans must meet all applicable standards and criteria for approval.
  - b. **Preliminary Review Letter Procedure:**
    - i. Any responsible party may apply for a preliminary review letter by submitting an application using a form provided by the city engineer.
    - ii. The city engineer will evaluate completed applications and may consult other governmental departments or agencies. The city engineer may

request additional information from the applicant to better evaluate the application.

- iii. The city engineer will provide the applicant with the preliminary review letter within 10 working days from the date the last information concerning the application is received.
- iv. The fee for preliminary review letters shall be determined according to sec. 104-8 of this chapter. The amount of this fee shall be deducted from an application fee for a storm water management permit for the site reviewed.
- v. The city engineer may require a preliminary review letter prior to accepting an application for a building permit or conditional use permit under applicable chapter(s) or for a certified survey map under applicable county or local land division chapter(s) where any of the following apply:
  - 1. The proposal would involve one or more acres within either the current or proposed boundaries of a commercial zoning district;
  - 2. Proposed lot or rezone area configuration would necessitate driveways, access roads, or other construction that would clearly require a storm water management plan under this chapter;
  - 3. Natural features of the site, including but not limited to, slope, soils, wetlands, or hydrology are such that, in the opinion of the city engineer, substantial risk of erosion, flooding, or other environmental or public safety hazard exists; or, in the opinion of the city engineer, consultation with the city engineer is necessary to determine land suitability requirements under local subdivision chapters.
- vi. Unless expressly waived by the applicant, decisions by the city engineer to require a preliminary review letter shall be made in writing and shall detail the reasons why the city engineer determines there to be a substantial risk of erosion, flooding, or hazard.

### 3. PERMIT / WAIVER APPLICATION.

- a. Any responsible party desiring a permit or waiver shall submit an application to the city engineer using a form provided by the city engineer.
  - i. A permit application shall consist of a completed application form, including a waiver application for relief from any requirement deemed not necessary to ensure compliance with the intent of this chapter, as provided for in sec. 104-4 two copies of a storm water management plan, a maintenance agreement and a non-refundable application review and administration fee.
  - ii. Permit applications shall be considered active until a permit has been issued or all reviews or appeals have been exhausted, as provided for in sec. 104-7 or sec. 104-10. Further applications for the site by an applicant who has had a permit denied, or has exhausted their appeals will be considered a new application, as provided for in sec. 104-7.
- b. The permit application form shall contain, at a minimum:
  - i. The name, address, and telephone number for the following or their designees:
    - 1. Landowner,

2. Developer,
  3. Agent, Project Manager or Supervisor who will oversee the land disturbing construction activities.
  4. Person and/or company responsible for BMP design,
  5. Person(s) responsible for installation of storm water management BMPs practices,
  6. Person(s) responsible for maintenance of storm water BMPs management practices prior to the transfer, if any, of maintenance responsibility to another party.
- ii. A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and a lot numbers within a recorded land subdivision plat.
  - iii. If the application is from a land user, the permit application form must be signed by the landowner of the site where the land disturbing construction activities are to take place. A notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent shall also be accepted, provided that it binds the landowner to the terms of this chapter and any permit issued to the permit holder, including the enforcement actions set forth in sec.104-9. Submission of an application by one of several landowners or land users of a particular site shall constitute an affirmation by the applicant of authority to act on behalf of the other landowners or land users to apply for, receive, and abide by the provisions of a permit. The city shall be under no obligation to ascertain the legal authority of the applicant to so act.
  - iv. Each permit application form shall contain an agreement by the applicant that:
    1. Authorizes the city engineer to enter the site to obtain information required for the review of the application; and
    2. Any land disturbing construction activity shall be conducted in accordance with the provisions of an approved or amended permit.
  - v. A waiver application, as provided for in sec. 104-4.4 , shall consist of a completed waiver application form, including a written justification and a conceptual development plan.

#### 4. STORM WATER MANAGEMENT PLANS

- a. **PLAN REQUIREMENTS.** The storm water management plan required under this chapter shall contain any information the city engineer requires to evaluate the environmental characteristics of the area affected by post-construction runoff land development and land redevelopment activity, the potential impacts of the proposed development upon the quality and quantity of storm water runoff discharges, the potential impacts upon water resources and drainage utilities, and the effectiveness and acceptability of proposed storm water management measures in meeting the performance standards set forth in this chapter. Unless specified otherwise by this chapter, storm water management plans shall contain a narrative, construction drawings, maps, or tables that, at a minimum, contain the following information.
  - i. Pre-development site conditions, including:



1. One or more site maps at a scale of either 1-inch equals 50 feet or 1-inch equals 100 feet, whichever is appropriate to the site size. The site maps shall show the following:
    - a. site location, address, and legal property description;
    - b. adjoining property and names of adjoining property owners;
    - c. predominant soil types and hydrologic soil groups;
    - d. existing cover type and condition;
    - e. topographic contours, using the best available data, of the site at a scale not to exceed 2 feet;
    - f. topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through and from the site;
    - g. watercourses, on or off-site, that may affect or be affected by runoff from the site;
    - h. flow path and direction for all storm water conveyance sections, including time of travel and time of concentration applicable to each;
    - i. watershed boundaries used in hydrology determinations to show compliance with performance standards;
    - j. lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site;
    - k. limits of the 100-year floodplain;
    - l. location of public, private, or municipal wells located within 600 feet of proposed storm water detention, retention, or infiltration basins;
    - m. wellhead protection areas covering the project area and delineated pursuant to NR 811.16, Wisconsin Administrative Code.
  2. Peak flow discharge rates, discharge volumes and pollution loading computations. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- ii. Post-development site conditions, including:
1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
  2. Explanation of any restrictions on storm water BMPs in the development area imposed by wellhead protection plans and chapters.
  3. One or more site maps at a scale of either 1 inch equals 50 feet or 1 inch equals 100 feet, whichever is appropriate to the site size, showing the following:
    - a. post-construction pervious land use including vegetative cover type and condition;

- b. impervious land use including all buildings, structures, and pavement;
  - c. post-construction topographic contours of the site at a scale not to exceed 2 feet;
  - d. post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from site;
  - e. locations and dimensions of drainage easements;
  - f. locations of maintenance easements specified in the maintenance agreement;
  - g. flow path and direction for all storm water conveyance sections, including time of travel and time of concentration applicable to each;
  - h. location and type of all storm water conveyance and treatment BMPs, including the on-site and off-site tributary drainage area;
  - i. location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as curbed street, storm drain, or natural drainage way;
  - j. watershed boundaries used in hydrology and pollutant loading calculations;
  - k. any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site
- 4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development. The geographic areas used in making the calculations shall clearly cross-referenced to the required map(s).
- 5. Computation of the inches of initial runoff that will be infiltrated across the site in comparison to the requirements set forth in sec. 104-6.4
- 6. Results of investigations of soils and groundwater required for the placement and design of storm water management measures.
- 7. Results of impact assessments on wetland functional values.
- 8. Design computations and all applicable assumptions for the storm sewer system.
- 9. Design computations and all applicable assumptions for storm water quality practices as needed to show that practices are appropriately sized to meet the performance standards of this chapter.
- 10. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.
- iii. A description and installation schedule for the storm water BMPs needed to meet the performance standards in sec.104-6.

- iv. A maintenance plan developed for the life of each storm water BMP including the required maintenance activities and maintenance activity schedule.
  - v. Cost estimates for the construction, operation, and maintenance of each storm water BMP.
  - vi. Assessment of possible public safety threats posed by planned storm water management BMPs practices and risk minimization provisions.
  - vii. Other information requested in writing by the city engineer to determine compliance of the proposed storm water BMPs with the provisions of this chapter.
- b. All site investigations, plans, designs, computations, and drawings shall be prepared in accordance with accepted engineering practices and requirements of this chapter.
- c. DRAINAGE EASEMENTS.
  - i. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road right-of-ways, perpetual unobstructed easements with a minimum of 30 feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. For drainage easements for pipes the minimum width shall be 20 feet. Drainage easements shall be carried from the road to a natural watercourse or to other drainage facilities.
  - ii. When a proposed drainage system will carry water across private land outside the project area, appropriate drainage rights must be secured and filed with the county register of deeds. Drainage shall be designed to avoid concentration of storm and drainage water from each lot to adjacent lots.
  - iii. The applicant shall either dedicate to the public as a parkland dedication or a drainage easement the land on both sides of existing watercourses, to a distance to be determined by the city engineer and also dedicate proposed and natural retention and detention basins.
- d. ALTERNATIVE REQUIREMENTS. The city engineer may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under sec. 104-6 of this chapter.
- e. REGIONAL STORM WATER MANAGEMENT PLANS. In lieu of submitting a preliminary or final storm water management plan for an individual site, an applicant may submit documentation of the following:
  - i. A regional storm water management plan, that includes the entire area of the proposed land development activity, that was prepared in accordance with the requirements of sec. 104-7.4 and the regional storm water management planning guidelines adopted by the city engineer.
  - ii. A registered professional engineer's certification that all regional BMPs planned to convey and manage the runoff from the area of the proposed land development have been constructed in accordance with the performance standards and specifications under sec.104-6. For regional facilities built, owned, or maintained by a city, village, or town, certification from that entity shall be sufficient to meet the requirements of this paragraph.

- iii. Documentation that there is an entity with the legal obligation for operation and maintenance of the storm water management facility.
5. MAINTENANCE AGREEMENT. The maintenance agreement required under sec. 104-7 for storm water management BMPs shall be an agreement between the city engineer and the permittee to provide for maintenance of storm water BMPs beyond the duration period of this permit. The maintenance agreement shall be recorded, at the permittee's expense, with the Rock County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of land served by the storm water management BMPs. The maintenance agreement shall contain the following information and provisions:
- a. Identification of the storm water facilities and designations of the drainage area served by the facilities;
  - b. A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan;
  - c. Identification of the responsible person(s), organization, or city, county, town or village responsible for long term maintenance of the storm water management BMPs identified in the storm water plan;
  - d. Requirements that the responsible person(s), organization, or city, county, town or village shall maintain storm water management BMPs in accordance with the schedule included in paragraph (B);
  - e. Authorization for the city engineer to access the property to conduct inspection of storm water BMPs as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
  - f. Requirements on the city engineer to maintain public records of the results of site inspections, inform the landowner responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management BMPs into proper working condition.
  - g. Agreement that the city engineer notify the responsible party designated under the maintenance agreement of maintenance problems which require correction. The specified corrective actions shall be taken within a maximum of 45 working days of notification.
  - h. Authorization of the city engineer to perform the corrective actions identified in the inspection report if the responsible party does not make the required corrections within a maximum of 45 working days of notification. The city engineer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subchapter VII of Chapter 66, Wisconsin State Statutes.
6. EVALUATION AND APPROVAL OF APPLICATIONS. Within three working days of receipt, the city engineer shall review applications to insure they are complete. Any application found to be incomplete shall be returned to the applicant for completion. Upon receiving a complete application, the city engineer shall use the following approval/disapproval procedure:
- a. Cities, villages, and towns containing waters or lands directly affected by the storm water management plan described within the application will receive notification of the application and be invited to participate in the application review process.

- b. Completed applications will be evaluated for compliance with the requirements of this chapter. Other governmental departments or agencies may be consulted during application evaluation.
  - c. Additional substantive information may be requested from the applicant to better evaluate the application.
  - d. Within 15 working days from the receipt of a complete permit application, or 10 working days from the receipt of additional information requested in accordance with paragraph C, whichever is later, the applicant shall be informed whether the application has been approved or disapproved. The city engineer shall base the decision on the requirements of this chapter.
  - e. Within 20 working days from the receipt of a complete waiver application, or 10 working days from the receipt of additional information requested in accordance with paragraph C, whichever is later, the applicant shall be informed whether the application has been approved or disapproved. The city engineer shall base the decision in consideration of the recommendations of the Technical Review Committee and the requirements of this chapter.
  - f. Failure to inform an applicant of a decision within the applicable time specified in paragraph (D) or (E) shall constitute approval of the application. If the application was for a permit, the applicant may then proceed in accordance with the provisions of the submitted plan, including any waivers requested in accordance with sec. 104-4.4.A. If the application was for a waiver under sec. 104-4.4.B., the waiver shall be deemed granted.
  - g. If the application is approved the city engineer shall issue the permit or waiver.
  - h. An application for a permit may be approved with conditions determined by the city engineer to be needed to meet the requirements of this chapter.
  - i. If the application is disapproved, the city engineer shall notify the applicant by certified mail and provide a written statement of the reasons for disapproval.
  - j. If the application is disapproved, or if the applicant does not agree with the permit conditions, the applicant may request a review by the Technical Review Committee. This request must be made in writing within 30 calendar days from the date of the applicant was notified of the city engineer decision. The schedule and procedure for a waiver described in paragraph (E) above will be followed for this review.
7. **PERMIT CONDITIONS.** All permits issued under this chapter shall be subject to the following conditions, and holders of permits issued under this chapter shall be deemed to have accepted these conditions. The city engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the permit holder. An action by the City engineer to suspend or revoke a permit may be appealed in accordance with sec. 104-10. Permits issued under this subsection may include conditions established by the city engineer in addition to the requirements needed to meet the performance standards in sec. 104-6 or a financial guarantee as provided for in paragraph (11). Compliance with this permit does not relieve the permit holder of the responsibility to comply with other applicable federal, state and local laws and regulations. All permits shall require the permit holder to:
- a. Design and install all structural and non-structural storm water BMPs in accordance with the approved storm water management plan and this permit;

- b. Notify the city engineer within 2 working days before beginning any work in conjunction with the storm water management plan, and upon completion of the storm water BMPs. If required as a special condition, the permit holder shall make additional notification according to a schedule set forth by the city engineer so that practice installations can be inspected during construction;
  - c. Certify "as built," all BMP installations required as part of this chapter. Completed storm water BMPs must pass a final inspection by the city engineer to determine if they are in accordance with the approved storm water management plan and chapter. The city engineer shall notify the permit holder in writing of any changes required in such BMPs to bring them into compliance with the conditions of this permit;
  - d. Maintain all storm water BMPs in accordance with the storm water management plan until they either become the responsible of a municipality, or are transferred to subsequent private owners as specified in the approved maintenance agreement;
  - e. Authorize the city engineer to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan;
  - f. Consent to a special assessment or charge against the property as authorized under subchapter VII of chapter 66, Wisconsin State Statutes, for costs incurred under paragraph (E), or to charging such costs against the financial guarantee posted under paragraph (11);
  - g. Repair at the permit holder's own expense all damage to adjoining municipal facilities and drainageways caused by storm water runoff, where such damage is caused by non-compliance with the approved storm water management plan, if so directed by the city engineer;
  - h. Make appropriate legal arrangements with adjacent property owners concerning the prevention of endangerment to property or public safety where site development or redevelopment involves changes in direction or increases in peak rate and/or total volume of runoff from of a site.
8. **PERMIT MODIFICATIONS AT THE PERMIT HOLDER'S REQUEST.** The permit holder must obtain permission from the city engineer prior to modifying an approved plan. Plans, or portions thereof, drawn or approved by professional engineer, surveyor, or landscape architect, must be amended to show that the author has approved the modifications. These modifications must be shown as amendments to the copy of the plan kept by the permit holder.
9. **PERMIT MODIFICATIONS AT THE CITY ENGINEER'S REQUEST.** If the BMPs implemented as part of the approved plan are determined by the city engineer to be inadequate to meet the performance standards of this chapter, the city engineer may modify the plan after consultation with the permit holder. These modifications shall be provided to the permit holder in writing and shall be shown as amendments to the copy of the plan kept by the permit holder. The permit holder shall implement these modifications according to a timetable established in the modifications.
10. **SITE VISITS.**
- a. If land disturbing construction activities are being conducted without a permit required by this chapter, a representative of the city engineer may enter the land,

pursuant to the provisions of secs. 66.0119 (1), (2) and (3), Wisconsin State Statutes, to obtain information necessary to undertake enforcement and penalties as provided by sec. 104-9 of this chapter.

- b. The city engineer shall conduct a site visit of each construction site that holds a permit under this chapter at least once every 30 calendar days during the period starting March 1 and ending October 31, and at least 2 times during the period starting November 1 and ending February 28, to ensure compliance with the provisions of the permit.
  - c. Site visits will be conducted at no additional cost to the permit holder, unless as the result of the visit the city engineer determines that a previously issued remedial action issued as part of a notice of non-compliance, as provided for in sec. 104-9 of this chapter, has not been accomplished as scheduled. The cost of the site visit will then be billed to the permit holder, according to the fee schedule adopted as provided for in sec. 104-8.
11. **FINANCIAL GUARANTEE.** As a condition of approval and issuance of the permit, the city engineer shall require the applicant to submit a financial guarantee, the form and type of which shall be acceptable to the city engineer.
- a. The financial guarantee shall be in an amount determined by the City engineer, based on the estimated costs of construction and maintenance of the storm water BMPs during the period which the designated party in the maintenance agreement has maintenance responsibility.
  - b. The financial guarantee shall give the city engineer authorization to use the funds to complete the plan if the permit holder defaults, or does not properly implement the required BMPs in accordance with the approved plan. The city engineer shall notify the permit holder in writing as provided for in sec. 104-9 of this chapter.
  - c. The city engineer shall release the portion of the financial guarantee established under this section, less any costs incurred by the city engineer to complete installation of BMPs, upon approval of the "as built" plans. The city engineer may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
  - d. The city engineer shall release the portion of the financial guarantee established to assure the maintenance of storm water BMPs, less any costs incurred by the city engineer, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.
12. **PERMIT DURATION.** Permits issued under this chapter shall be valid for one year or until the city engineer notifies the permit holder that all storm water BMPs have passed the final inspection required in sec. 104-7. After one year permits shall be renewed monthly until all storm water BMPs have passed final inspection. The city engineer may require additional BMPs as a condition of the extension if necessary to meet the requirements of this chapter. In the case where the land disturbing construction activities do not begin within two years after the issuing of a permit, that permit shall become void.

(Ord. 2005-27, Ord. 2009-05)

#### **Section 104-8. Fee Schedule.**

1. The city council, as part of the annual budget, shall determine the fees referenced in other sections of this chapter.
2. Fees paid under this section shall equal as closely as possible the city engineer costs of administering the provisions of this chapter, including applicant consultations, application evaluation and approval, permit holder consultations and site inspections.
3. All fees shall be doubled if work is started before a permit is applied for and issued. Such doubled fees shall not release the applicant from full compliance with this chapter nor from prosecution for violation of this chapter.

(Ord. 2005-27, Ord. 2009-05)

#### **Section 104-9. Enforcement and Penalties**

1. Any land disturbing construction activities or post-construction runoff initiated after the effective date of this chapter by any person, firm, association, or corporation subject to the provisions of this chapter shall be deemed a violation unless conducted in compliance with the requirements of this chapter.
2. Every violation of this chapter is a public nuisance. Compliance with this chapter may be enforced by injunctive order at the suit of the city pursuant to sec. 62.23(7)(f), 62.23(7a)(g) and/or 62.23(8), Wisconsin State Statutes. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.
3. The city engineer shall notify the permit holder by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken. Non-complying activities include, but are not limited to:
  - a. Any land disturbing construction activity or post-construction runoff regulated under this chapter being undertaken without a permit or waiver;
  - b. The plan not being implemented;
  - c. The conditions of the permit not being met.
4. Upon receipt of written notification from the city engineer under paragraph (3) (A) the permit holder shall comply with the remedial actions described in the notice.
5. Upon receipt of written notification from the city engineer under paragraphs (3) (B) or (3) (C), the permit holder shall correct work that does not comply with the plan, or other provisions of the permit as necessary to meet the specifications and schedule set forth in the notice.
6. If a permit holder does not comply with the provisions of a notice of non-compliance, the city engineer may revoke the permit.
7. If non-compliance with this chapter is determined by the city engineer as likely to result in damage to adjacent property, public facilities, or waters of the state, the city engineer may post a stop-work order at the time of notification.
8. If the permit holder does not comply with the provisions of a notice of non-compliance, or violates a stop-work order, the city engineer may request the city attorney to obtain a cease and desist order in any court with jurisdiction.
9. Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the city engineer, board of appeals, or by a court with jurisdiction.



10. If non-compliance with this chapter is determined by the city engineer as likely to result in damage to adjacent property, public facilities, or waters of the state, the city engineer may issue to the permit holder or landowner a notice of intent to perform specific work necessary to comply the requirements of an approved plan, or to protect property, public facilities, or waters of the state.
11. After 5 working days from issuing the notice of intent, the city engineer may enter upon the land and perform work, or other operations necessary to bring the condition of said lands into conformance with an approved plan, or to protect adjacent property, public facilities, or waters of the state.
  - a. The city engineer shall keep a detailed account of the costs and expenses of performing this work. These costs, plus legal and staff costs incurred by the city, shall be billed to the owner of title of the property.
  - b. In the event a permit holder or landowner fails to pay the amount due, the amount shall be deducted from any financial guarantee posted pursuant to sec.104-7.11 of this chapter. Where such a financial guarantee has not been established, or is insufficient to cover these costs and expenses, the amount shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon pursuant to subchapter VII of chapter 66, Wisconsin State Statutes, for the year in which the work is completed.
12. Upon the receipt of assurances deemed sufficient by the city engineer, the permit holder may be authorized by the city engineer to resume responsibility for the BMPs undertaken under paragraph (11).
13. Any person, firm, association, or corporation violating any of the provisions of this chapter shall be subject to a forfeiture of no less than 500 dollars, nor more than 5,000 dollars, and the costs of prosecution, including staff time, per offense. Each day a violation exists shall constitute a separate offense.

(Ord. 2005-27, Ord. 2009-05)

#### **Section 104-10. Appeals.**

1. **BOARD OF APPEALS.** The board of appeals:
  - a. Shall hear and decide appeals where it is alleged that there is an error in any order, decision, or determination made by the city engineer in administering this chapter, except for cease and desist orders obtained under sec.104-9.8;
  - b. Shall use the rules, procedures, duties, and powers authorized by statute, in hearing and deciding appeals and authorizing variances; and
  - c. Upon appeal, may authorize variances from the provisions of this chapter that are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship.
2. **WHO MAY APPEAL.** Any applicant, permittee, or landowner may appeal within 30 calendar days of the date of any order, decision, or determination made by the city engineer in administering this chapter, relative to sites in which such person has an interest.

(Ord. 2005-27, Ord. 2009-05)

### **Section 104-11. Severability.**

If a court of competent jurisdiction judges any section, clause, provision, or portion of this chapter unconstitutional or invalid, the remainder of the chapter shall remain in force and not be affected by such judgment.

(Ord. 2005-27, Ord. 2009-05)

### **Section 104-12. Definitions.**

*Agency* means the city engineer and the municipal services committee.

*Agricultural Facility* means a structure associated with an agricultural practice.

*Agricultural Practice* means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint, and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

*Application Review Fee* means money paid to the city by the permit applicant for recouping the expenses incurred by in administering the provisions of this chapter.

*Average Annual Rainfall* means a calendar year of precipitation, excluding snow, which is considered typical.

*Bank Erosion* means the removal of soil particles from a bank slope primarily caused by water action, such as fluctuations in water volume and velocity, but also by climatic conditions, ice and debris, chemical reactions, and changes in land and stream use.

*Best Management Practice* or *BMP* means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

*Cease and Desist Order* means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit, or in violation of the terms of a permit.

*Combined Sewer System* means a system for conveying both sanitary sewage and storm water runoff.

*Connected Imperviousness* means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

*Construction Site* **means** an area upon which one or more land disturbing construction activities are occurring, including areas that are part of a larger common plan of development or sale

where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

*Design Storm* means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

*Detention Basin* means a type of storm water basin that has a direct outlet and serves to reduce water velocity and volumes by releasing water at designed flow rates to temporarily detain water flows.

*Development* means residential, commercial, industrial, or institutional land uses and associated roads.

*Discharge Volume* means the quantity of runoff discharged from the land surface as the result of a rainfall event.

*Division of Land* means the division of an existing lot or land parcel; the creation of a condominium unit; an interest in real property (including land for a public facility) by the owner thereof for the purpose of sale or building development.

*DNR* means the Wisconsin Department of Natural Resources.

*Effective Infiltration Area* means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms, or pre-treatment.

*Erosion* means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.

*Exceptional Resource Waters* means waters listed in sec. NR 102.11, Wisconsin Administrative Code.

*Extraterritorial* means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

*Final Site Stabilization* means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

*Financial Guarantee* means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the city clerk by the permit holder to assure that requirements of the chapter are carried out in compliance with the storm water management plan.

*Hydrologic Soil Group* means a group of soils having similar runoff potential under the same storm and cover conditions. Major hydrologic soil groups are group A for sand, loamy sand or

sandy loam; group B for silt loam or loam; group C for sandy clay loam; group D for clay loam, silty clay loam, sandy clay, silty clay or clay.

*Impervious Surface* means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots, and streets are examples of surfaces that typically are impervious.

*In-fill Area* means an undeveloped area of land located within existing development.

*Infiltration* means the entry of precipitation or runoff into or through the soil.

*Infiltration System* means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

*Infiltration Basin* means a type of storm water basin that has no direct outlet and empties mainly by infiltration of water into the soil.

*Karst Feature* means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

*Kettle* means a naturally occurring, glacially derived, depression with no surface water outlet, commonly identified by internal tick marks on contour maps.

*Land Development Activity* means any construction or residential or other urban or suburban development resulting from the conversion of previously undeveloped or agricultural land uses.

*Land Disturbing Construction Activity* means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative and non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes, but is not limited to clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural land use or silviculture activities.

*Land Redevelopment Activity* means development that is replacing older development.

*Land User* means any person operating upon, leasing, or renting land, or having made any other arrangements with the landowner by which the land user engages in uses of land that are subject to this chapter.

*Landowner* means person holding title to or having an interest in a parcel of land that includes a site subject to this chapter.

*Maintenance Agreement* means a legal document which provides for long-term maintenance of storm water management BMPs practices that is filed with the Rock County Register of Deeds as a property deed restriction, so that it is binding upon all subsequent owners of land served by the storm water management BMPs practices.

*Maximum Extent Practicable* means a level of implementing BMPs in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. "Maximum extent practicable" allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

*Municipality* means a town, county, village, or city.

*New Development* means development resulting from the conversion of previously undeveloped land or agricultural land uses.

*Non-Residential Development* means development that is not residential. This includes the following land uses: commercial, industrial, government and institutional, recreation, transportation, communication, and utilities.

*Non-Structural Storm Water Management Measure* means a practice, technique, or measure to reduce the volume, peak flow rate, or pollutants in storm water that does not require the design or installation of fixed storm water management facilities.

*NRCS* means the Natural Resources Conservation Service a division of the United States Department of Agriculture.

*Off-site* means located outside the property boundary described in the permit application for land development or land redevelopment activity.

*On-site* means located within the property boundary described in the permit application for the land development or land redevelopment activity.

*Ordinary High Water Mark* means has the meaning given in sec. NR 115.03(6), Wisconsin Administrative Code.

*Outstanding Resource Waters* means waters listed in sec. NR 102.10, Wisconsin Administrative Code.

*Peak Flow Discharge Rate* means the maximum unit volume of storm water discharged during a specific unit of time.

*Percent Fines* means the percentage of a given sample of soil that passes through a #200 sieve.

*Performance Standard* means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

*Permit* means a written authorization made by the city engineer to an applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

*Pervious Surface* means an area that releases as runoff a small portion of the rainfall that falls on it. Lawns, gardens, parks, forests, or other similar vegetated areas are examples of surfaces that typically are pervious.

*Pollutant* means has the meaning given in sec. 283.01(13), Wisconsin State Statutes.

*Pollution* means has the meaning given in sec. 281.01(10), Wisconsin State Statutes.

*Post-Construction* means following the completion of land disturbing construction activity and final site stabilization.

*Post-Construction Storm Water Runoff Discharge* means any storm water discharged from a site following the completion of land disturbing construction activity and final site stabilization.

*Post-Development Site Condition* means the extent and distribution of land cover types anticipated to occur under conditions of full development that will influence rainfall runoff and infiltration.

*Pre-Development Condition* means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

*Pre-Treatment* means the treatment of storm water prior to its discharge to the primary storm water treatment practice in order to reduce pollutant loads to a level compatible with the capability of the primary practice.

*Preventive Action Limit* means has the meaning given in sec. NR 140.05(17), Wisconsin Administrative Code.

*Quasi-Public* means essentially public, as in services rendered, although under private ownership or control.

*Reconstruction* means has the meaning given in sec. 84.013(1) (c), Wisconsin State Statutes.

*Redevelopment* means areas where development is replacing older development.

*Responsible Party* means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs.

*Resurfacing* means has the meaning given in sec. 84.013(1) (d), Wisconsin State Statutes.

*Residential Development* means that which is created to house people, including the residential dwellings as well as all attendant portions of the development including lawns, driveways, sidewalks, garages, and access streets. This type of development includes single family, multi-family, apartments, and trailer parks.

*Retention Basin* means a type of storm water basin that has no direct outlet and empties by infiltration or evaporation.

*Runoff* means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

*Runoff Curve Number* means a parameter that combines effects of soils, watershed characteristics and land use to estimate the amount of runoff from land surfaces.

*Sedimentation Basin* means a type of storm water basin for the purpose of capturing and retaining any sedimentation flowing off of sites as a result of land developing or land disturbing construction activities.

*Separate Storm Sewer* means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria: Is designed or used for collecting water or conveying runoff, Is not part of a combined sewer system, Is not draining to a storm water treatment device or system, Discharges directly or indirectly to waters of the state.

*Site* means the entire area included in the legal description of the land on a permit application on which the land disturbing construction activity is proposed or has occurred.

*Site Visit* means an in-person observation of the site by the city engineer to determine compliance with this chapter. The costs of site visits are generally included in the permit fee. However, the cost of site visits as the result of enforcement actions will be billed to the permit holder.

*Site Restriction* means any physical characteristic that limits the use of a storm water BMP or management measure.

*Shoreland Overlay District* means an area within 1,000 feet of the ordinary high water mark of navigable lakes, ponds or flowages, or within 300 feet of the ordinary high water mark of navigable rivers or streams, or to the landward of the floodplain, whichever distance is greater, as defined in Chapter 100 Shoreland-Wetland Zoning, City of Evansville Code of Ordinances.

*Source Area* means a component of land use from which storm water pollutants are generated during periods of snowmelt and rainfall runoff. Source areas include rooftops, sidewalks, driveways, parking lots, storage areas, streets and lawns.

*Stop-Work Order* means an order issued by the city engineer that requires that all construction activity on the site be stopped.

*Storm Water* means precipitation runoff, snows melt runoff, surface runoff, and drainage.

*Storm Water Basin* means an artificially created catchment for the purposes of retaining, detaining, or infiltrating storm water. A storm water basin may also be designed to collect sedimentation.

*Storm Water Management Plan* means a comprehensive plan designed to reduce the discharge of runoff and pollutants from storm water after a site has undergone final stabilization following the completion of the construction activity.

*Storm Water Management System Plan* means a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

*Storm Water System* means waters of the state, drainage swales, storm water basins, storm sewers and pipes, storm drains, pumps, and lift stations, roads with drainage systems, streets, curbs, gutters, ditches, constructed channels, culverts and all other appurtenances now and hereafter existing, used or useful in connection with the collection, control, transportation, treatment, or discharge of storm water.

*Structural Storm Water Management Measure* means source area BMPs practices, conveyance measures, and end-of-pipe treatment that are designed to control storm water runoff pollutant loads, discharge volumes, and peak flow discharge rates.

*Technical Review Committee* means the City of Evansville Municipal Services Committee. If groundwater concerns are among issues the committee must address, the Rock County Public Health Department may be invited to participate as a member of the committee for that application.

*Technical Standard* means a document that specifies design, predicted performance and operation and maintenance specification for a material, device or method.

*Top of the Channel* means an edge, or point on the landscape, landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

*TR-55* means the National Resources Conservation Service, Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

*Transportation Facility* means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail and also includes any other public work for transportation purposes such as harbor improvements under sec. 85.095(1) (b), Wisconsin State Statutes. "Transportation



facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Commerce pursuant to sec. 101.1205, Wisconsin State Statutes.

*Type II Distribution* means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973". The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

*Waters of the State means* all lakes, bays, rivers, streams, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private within Wisconsin, or its jurisdiction.

*Wetland Functional Value* means the type, quality, and significance of the ecological and cultural benefits provided by wetland resources, such as: flood storage, water quality protection, groundwater recharge and discharge, shoreline protection, fish and wildlife habitat, floral diversity, aesthetics, recreation, and education.

*Wetlands* means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophilic vegetation and which has soils indicative of wet conditions. These wetlands include natural, mitigation, and restored wetlands.

*Working Day* means Monday, Tuesday, Wednesday, Thursday, or Friday, excluding any such day officially observed by the city as a legal holiday.

(Ord. 2005-27, Ord. 2009-05, Ord. 2014-02)